78-1225

IN THE

Supreme Court of the United States

FEBRUARY TERM, 1979

NO.

ADINA ETKES,

Appellant,

VS.

BARTELL MEDIA CORPORATION and MACFADDEN-BARTELL CORPORATION,

Appellees.

Appeal from Superior Court of Los Angeles County State of California

JURISDICTIONAL STATEMENT

ADINA ETKES
Pro. Per.

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IN THE

SUPREME COURT OF THE UNITED STATES

February Term, 1979

NO.

ADINA ETKES,

Appellant,

VS.

BARTELL MEDIA CORPORATION and MACFADDEN-BARTELL CORPORATION,

Appellees.

JURISDICTIONAL STATEMENT

OPINION BELOW

The order of the Supreme Court of California denying a hearing, and other related orders, and opinion not published, are set forth in the appendix hereto.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(1).

STATUTE INVOLVED

42 U.S.C. Section 1983:

"Every person, under color of any statute, ordinance, regulation, custom, or wage of any State or Territory, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at Law, suit in equity, or other proper proceeding for redress "

CONSTITUTIONAL PROVISION

ARTICLE 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any Law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of Law, nor deny to any person within its jurisdiction the equal protection of the Law.

QUESTIONS PRESENTED

1

WHETHER THE SUPREME COURT OF CALIFORNIA DENIAL OF A HEARING, AND THUS REDRESS, CONTRARY TO BAKER AND HUMPHREY, AND THUS CONTRARY TO THE FOURTEENTH AMENDMENT?

11

WHETHER THE SUPERIOR COURT OF LOS

ANGELES COUNTY FUNCTION HERE, WITHOUT JURY AND WITNESSES, IN DETERMINING LIBEL, CONTRARY TO PECK AND TRIBUNE COMPANY, AND THUS CONTRARY TO THE FOURTEENTH AMENDMENT?

STATEMENT OF THE CASE

Appellees publish a nationwide magazine Photoplay. Said magazine published a story concerning appellant and her son by actor Hugh O'Brian, whose legal name is Krampe, that is defamatory, distorted judicial proceedings, resorted to name calling, and fabricated falsehoods calculated to injure appellant and her son. When the magazine ignored her letter requesting a retraction, appellant sued its publishers.

The Photoplay story reached back several years to "report" on a paternity hearing, closed to the public and press, which they falsely claimed involved a long battle and a decision

that took the Court a week to arrive at, when in reality said hearing took about three hours and culminated in an immediate court's decision. Obviously, this was calculated to give the impression that appellant had a difficult time proving her cause in court. The story then attributes to appellant a statement she supposedly made to the press, which was never made by her, and is contrary to what she and the father said in court that their relationship began several years prior to the birth of their son. This is indicated in the court reporter's transcript which was ignored by Photoplay in their desire to fabricate their own details that would lead the readers to believe that appellant is a woman of easy virtue, and that her son was born out of moral turpitude. This is made clear when the story places appellant in the company of women who lost their paternity claims, and who by their own admission had

their children as a result of a fly by night encounter. Appellant has nothing in common with these women. Prior to the publication of the story, appellant enjoyed a good reputation and was considered a serious individual and concerned photographer. Thus she was badly injured. It is stated in Peck v. Tribune Co.:

> "A publication cannot be held as a matter of law not to be libelous because it may not injure the plaintiff's standing with the general public, if it may injure her in the estimation of a considerable and respectable class of the community..... Therefore it was the plaintiff's right to prove her case and go to the jury." 29 S. Ct., 554, 214 U.S. 185 at 190.(1908)

The headline of the story brands appellant's son with a word that carries with it a lot of social stigma. To do so, they fabricated a headline: "Why has he kept his illegitimate

birth hidden all these years." His birth was never hidden. He was always known by his father's name. His birth certificate and school records attest to that. He was mentioned in print in a number of publications, prior to the Photoplay story, none of them resorting to name calling. This meets the definition of malice per se, as stated in White v. Nicholls:

> "Every publication, either by writing, printing or pictures, which charges upon or imputes to any person that which renders him liable to punishment, or which is calculated to make him infamous, or odious, or ridiculous, is prima facie a libel, and implies malice in the author and publisher towards the person concerning whom such publication is made..... The jury, and the jury alone were to determine whether this malice did or did not mark the publication." 44 U.S. 266, at 291, 292. (1845)

There is more here than just malice towards appellant's son. Photoplay, by creating the false impression that appellant approved the story that defames her son, renders her odious, infamous and ridiculous.

Appellant had a good cause. It was baffling that respondents' demurrer was sustained without leave to amend, and that the appeal failed. Appellant's attorneys refused to ask the Supreme Court of California for a hearing.

It was about June, 1978 that appellant learned that her former attorneys should not have handled her case because of a conflict of interest. Marvin Mitchelson is and was the attorney for a woman who was an editor of the malicious story, Pamela Mason. He recently handled a case for her against Bank of America. Chase Morgan, who handled the appeal with Ronald Scheinman, was a student at Loyola University, at the time Paul Selvin, the other

side's attorney, was teaching there. It then became clear that Mitchelson dropped appellant's son's name from the law suit against Photoplay; in order to weaken it, he minimized the importance of the hearing on defendant's demurrer, in order to keep appellant away from it. He said nothing about the untimely demurrer, served later than the time allotted for its service under California law. Morgan and Scheinman, being familiar with the law, must have known about these irregularities, but kept mum, and followed in Mitchelson's footsteps in steering this good cause off course. Even the Court of Appeal's opinion is mostly a copy of defendant's demurrer, and extremely misleading, as is indicated in its summation (App. A-5) which reduces appellant's complaint to a mere desire 'not to want to see the details of the paternity hearing publicized in Photoplay'. As is clear from the complete Minutes of said Hearing (App. A-6)

which barely cover half a page of legal size stationery, it was very short and ar easy victory for appellant and her son, contrary to what was reported in Photoplay. It is this distortion of judicial proceedings that appellant objects to, amongst other grievances against Photoplay magazine.

Appellant in her motion to the Court of Appeal, on July 14, 1978, to recall the remittitur, backed all her allegations with proof. Thus, the other side's attorney, Paul Selvin, should have answered them point by point. Instead, he wrote a letter to the presiding judge of the Court of Appeal, saying that he did nothing wrong. His letter is a fraud, for he knows that appellant's allegations are true and correct. The motion was denied a day later. This obvious discrimination is so unjustifiable as to be violative of the due process clause in the Fourteenth Amendment. It also

denies appellant the right to redress as stated in Baker v. Humphrey:

> "A breach of duty on the part of an attorney is 'constructive fraud' and is sufficient, without actual fraud, to give the client a right to redress." 101 U.S. 494, at 502. (1879)

The matter and issues herein should be argued.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

As is indicated in the foregoing Statement of the Case, the Courts and attorneys involved here, have acted contrary to the Constitution of the United States, the Statutes, and decisions of this Court in similar cases. Should fraud and error be rewarded, or the remedy of redress applied, in accordance with the Authorities cited herein.

CONCLUSION

For the foregoing reasons, Appellant Adina Etkes, urges this Court to note probable jurisdiction over this case, set the case for plenary consideration, and reverse the judgment appealed from.

Respectfully submitted,

ADINA ETKES

Pro. Per.

APPENDIX

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THE SUPREME COURT

OF THE STATE OF CALIFORNIA

ADINA ETKES, Plaintiff and Appellant,	)	
VS.	)	2nd Civil No. 41940
BARTELL MEDIA CORPORATION, et al.	)	
Defendants and Respondents	)	

ORDER

Petition for hearing denied.

Dated: September 14, 1978.

No opinion was given.

COURT OF APPEAL

SECOND APPELLATE DISTRICT

STATE OF CALIFORNIA

ADINA ETKES, Plaintiff and Appellant,	)	
VS	)	2nd Civil No. 41940
BARTELL MEDIA CORPORATION, et al.	)	
Defendants and Respondents.	)	

ORDER

Motion to recall remittitur denied.

Dated: July 21, 1978.

No opinion was given.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Name of Judge, Honorable David Thomas

Cause No. C 30394 Date: Sept. 15, 1972

Title of Cause - Adina Etkes vs. Bartell Media Corporation, et al.

Council for Plaintiff, Marvin M. Mitchelson.

Council for Defendants, Paul Selvin.

Brief Statement of Hearing - Hearing on Defendants' demurrer to complaint.

ORDER: Defendants' demurrer is sustained without leave to amend.

COURT OF APPEAL

SECOND APPELLATE DISTRICT

STATE OF CALIFORNIA

Name of Presiding Judge, Otto M. Kaus.

Name of Justices, James Hastings and Clark E. Stephens.

Cause No. 2nd Cvil No. 41940

Title of Cause - Adina Etkes vs. Bartell Media Corporation, et al.

Council for Plaintiff and Appellant, Chase Morgan and Ronald Scheinman.

Council for Defendants and Respondents, Paul Selvin.

Brief Statement of Cause - Appeal from Superior Court of Los Angeles County Hon. David Thomas, Judge.

OPINION of Court of Appeal, entered on April 9, 1974, affirmed Judgment.

OPINION

OF COURT OF APPEAL

SECOND APPELLATE DISTRICT

Entered: April 9, 1974

(Last page)

While it is understandable that Etkes would not want the details of the paternity proceedings publicized in the movie magazine Photoplay, we do not believe, for the reasons stated, that she could state a cause of action for defamation or for invasion of privacy.

The judgment is affirmed.

Not for publication.

Hastings, J.

We concur:

Kaus, P. J.

Stephens, J.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES DEPT. 11

Date FEB 5, 1969 Hon. LESTER E OLSON, Judge; D L ARMSTRONG, Deputy Sheriff; R L BARTLETT, Deputy; C AXTON, Reporter

4

D 726858

HUGH DONALD KRAMPE, A MINOR CHILD, BY ADINA ETKES, HIS GUARDIAN AD LITEM

VS

HUGH KRAMPE

Counsel for Plaintiff: JACK DUNAWAY

Counsel for Defendant: ZAGON, SCHIFF, HIRSCH & LEVINE BY DAN PARK

STATISTICAL CODE CLERKS USE ONLY

NATURE OF PROCEEDINGS: PATERNITY TRIAL - TRANSFERRED FROM DEPARTMENT 8

ADINA ETKES AND HUGH DONALD KRAMPE ARE SWORN AND TESTIFY FOR THE PLAINTIFF. PLAINTIFF'S EXHIBIT #1 (CERTIFICATE OF BIRTH) IS ADMITTED IN EVIDENCE. DONALD KRAMPE IS SWORN AND TESTIFIES OUT OF ORDER FOR THE DEFENDANT. HUGH CHARLES KRAMPE IS SWORN AND TESTIFIES FOR THE PLAINTIFF UNDER SECTION 776 EVIDENCE CODE. THE PLAINTIFF AND DEFENDANT ARE OBSERVED BY THE COURT STANDING SIDE BY SIDE AND FACING THE COURT AT THE REQUEST OF THE PLAINTIFF. PLAINTIFF RESTS. MOTION OF THE DEFENDANT FOR JUDGMENT OF NON-SUIT IS DENIED. HUGH CHARLES KRAMPE TESTIFIES FOR THE DEFENDANT. DEFENDANT RESTS. ADINA ETKES IS RECALLED AND TESTIFIES FOR THE PLAINTIFF IN REBUTTAL. ALL REST. CAUSE IS ARGUED. THE COURT FINDS PURSUANT TO SECTION 632 C.C. THAT THE DEFENDANT HUGH KRAMPE IS THE FATHER OF THE MINOR CHILD PLAINTIFF HUGH DONALD KRAMPE. THE MATTER OF SUPPORT AND ATTORNEY FEES IS ORDERED TO STAND SUBMITTED.

IN THE COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA

ADINA ETKES, Plaintiff and Appellant,	)	
VS.	)	2nd Civil No. 41940
BARTELL MEDIA CORPORATION, et al,	)	
Defendants and Respondents.	)	

NOTICE OF APPEAL

Notice is hereby given that ADINA ETKES, the plaintiff and appellant herein, hereby appeals to the Supreme Court of the United States from the final decree of this court, denying motion to recall remittitur, entered on July 21, 1978, a hearing on which was denied by the California Supreme Court on September 14, 1978.

This appeal is taken pursuant to Section 1257(1) of Title 28 of the U.S. Code.

Dated: December 2, 1978.

ADINA ETKES
Pro. Per.

CERTIFICATION OF SERVICE

The undersigned, Adina Etkes, hereby state- that copies of the foregoing Jurisdictional Statement were served by certified mail on Paul Selvin, the attorney for Bartell Media Corporation, et al, 1900 Avenue of the Stars, Suite 2400, Los Angeles, California 90067, and on Judge David Thomas, Los Angeles Superior Court, 111 N. Hill St., Los Angeles, California 90012.

ADINA ETKES

Pro. Per.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1225

HARRY B. HELMSLEY, et al.,
Appellants

v.

THE BOROUGH OF FORT LEE, et al.,
Appellee

AMERICANA ASSOCIATES, et al.,
Appellants

v.

THE BOROUGH OF FORT LEE,
Appellee

NEW JERSEY REALTY COMPANY, et al.,
Appellants

v.

THE BOROUGH OF FORT LEE, et al.,
Appellee

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

MOTION TO DISMISS

On the Brief:
KENNETH E. MEISER,
Esquire

STANLEY C. VAN NESS,
Public Advocate
Department of the Public Advocate
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OTHER REFERENCES

INTRODUCTION

Appellee, New Jersey Department of the Public Advocate moves the court to dismiss the appeal herein on the ground that there is no substantial Federal question.

THE NATURE OF THE CASE

In August 1977 the New Jersey Supreme Court vacated and remanded these cases for a hearing on the issues of fair and reasonable return. The New Jersey Department of the Public Advocate was permitted to intervene at that point to represent the interests of tenants. A seventeen day hearing was held on the subject. Based on this voluminous record the New Jersey Supreme Court rendered a comprehensive 44 page decision. *Helmsley v. Borough of Fort Lee*, 78 *N.J.* 200, 394 *A.*2d 65 (1978).

Plaintiffs challenged the constitutionality of the Fort Lee rent control ordinance. The ordinance was amended to allow landlords an automatic 2.5% rent increase each year. Landlords could also automatically pass on to the tenant any increase in their property tax. Finally if the landlord needed additional rental increases, he could seek a hardship increase from the Fort Lee Rent Board. Plaintiffs argued that the provision of the ordinance restricting automatic rent increases to 2.5% per year was unconstitutional.

The New Jersey Supreme Court declared that the Constitution does not require rent control laws to permit all cost increases to be automatically passed through to tenants. In fact, a municipality could validly dispense with all automatic increases and require a landlord to apply to the Rent Board for all increases. 35a. This is the way that most public utility commissions handle rate increases for public utilities. However the court held that if a municipality seeks to impose stringent limitations on automatic increases, it must provide a prompt, fair and efficacious system of administration relief. *Helmsley*, 44a. If a municipality does not have a prompt fair and efficacious system of administrative relief, then it must enact a "more moderate rent control scheme," one which permits automatic

rent inceases sufficient to allow landlords a fair return. The court found that Fort Lee's rent board had not yet developed a prompt, fair and efficacious system of administrative relief.* Accordingly Fort Lee was required to provide automatic rent increases of sufficient magnitude so that they would not have a confiscatory effect on landlords.

Having established this legal standard, the court then reviewed the facts to determine whether, as plaintiffs alleged, the 2.5% limitation on automatic increases would have a confiscatory effect on Fort Lee landlords. The New Jersey court held that the landlords had failed to meet their burden of proof that the 2.5% limitation was confiscatory to landlords from 1974 to 1976. 18a-19a. Nevertheless the plaintiffs did prove that the foreseeable impact of the 2.5% limitation after 1976 would be widespread confiscation. *Helmsley*, 19a. Accordingly the New Jersey Supreme Court declared the amendment to the ordinance limiting rent increases to 2.5% invalid as of December 31, 1976; the effect of its decision was to reinstate the original provision of the ordinance allowing landlords to raise rents by the percentage increase in the Consumer Price Index. *Helmsley*, 35a.

Plaintiffs fundamental grievance with the New Jersey Supreme Court decision is that the court failed to invalidate the 2.5% limitation for the period 1974-76. This decision is not the result of an interpretation of constitutional law. The decision of the court is based purely and simply upon the failure of plaintiffs to meet their burden of proof. No substantial Federal question is presented.

Plaintiffs also raise a second legal question. The New Jersey Supreme Court determined that a rational basis for the imposition of rent control in Fort Lee existed. Plaintiffs now argue that, as a matter of substantive due process, nothing less than a national emergency will justify rent control. As will be

*Contrary to plaintiffs' assertions in its brief, the court in its decision did not declare the administrative system unconstitutional. The Board remains in operation and any aggrieved landlord may appeal a decision it renders to the New Jersey Superior Court, Appellate Division.

shown, this argument is without merit and does not raise a substantial Federal question.

I. THE FAILURE OF THE APPELLANTS TO MEET THEIR BURDEN OF PROOF ON THEIR ALLEGATION OF CONFISCATION FOR THE PERIOD 1974-76 DOES NOT RAISE A SUBSTANTIAL FEDERAL ISSUE.

Fort Lee New Jersey allowed landlords a 2.5% automatic rent increase each year and also allowed each landlord to automatically pass-through increases in property taxes. If a landlord needed additional increases in order to make a fair return, he could seek a hardship increase from the Fort Lee Rent Board.

Plaintiffs filed suit challenging this ordinance on constitutional grounds. The New Jersey Supreme Court held that the plaintiffs had proven that 2.5% limitation after December 31, 1976 would have a "foreseeable confiscatory effect." *Helmsley*, 19a, 22a. However the landlords had failed to prove that the 2.5% limitation had a confiscatory effect for the period of November 6, 1974 to December 31, 1976. *Helmsley*, 19a. The issue which appellants seek this court to review is whether the New Jersey Supreme Court erred in finding that appellants failed to meet their burden of proof. This burden of proof question raises no substantial Federal constitutional issue.

The appellants chose not to produce any evidence about their investment in their buildings or about their return on investment for the period in question (1974-1976). *Helmsley*, 15a. Thus the Supreme Court had no evidence by which it could determine that the appellants were not making a fair return on investment.*

*The plaintiffs' asserted that they were not making a fair return on the fair market value of their buildings. The Supreme Court found this approach to be circular and unworkable. It is circular because the value is determined through capitalization of income; yet the amount of income to be allowed is the very question at issue. The circularity of a value formula in the context of public utility regulation was recognized in *Federal Power Commissioners v. Hope Natural Gas*, 320 *U.S.* 591, 64 *S. Ct.* 281, 88 *L. Ed.* 333 (1974). Because of the circularity problem, no public utility commission considers fair market value in determining rates for utilities. Bonbright *Principles of Public Utility Rates*, (1961) p. 163-4.

The appellants did however produce general financial data on their operating expenses and income. Based on a careful examination of this data, the New Jersey Supreme Court held that the appellants had not met their burden of proof in proving confiscation for this two year period. The New Jersey Supreme Court gave three reasons to support its decision. First the landlords net operating income (income minus operating expenses) in most buildings for 1976 was within 5% of the 1973 level. Furthermore, a simple comparison of figures "is vulnerable to distortion caused by abnormalities in either the 1976 or 1973 data" and the landlords "have not submitted any more sophisticated statistical analysis." *Helmsley*, 18a. The court concluded "On the present record, however, we cannot say that the 2.5% limitation was confiscatory because landlords' profits remained approximately constant between 1973 and 1976." *Helmsley*, 17a-18a. Likewise although the landlords' operating ratios (ratio of operating expenses to income) were rising, the court could not "say on this record that the general level is clearly confiscatory. Here again, plaintiffs presented only sketchy and conclusory testimony." *Helmsley*, 18a. Finally the court stated that the appellants had not proven that the few buildings with low net operating income and high operating ratios which might have qualified for hardship relief were not isolated cases. The court held that a limited number of hardship cases alone does not prove widespread confiscation. *Helmsley*, 18a-19a. The decision of the New Jersey Supreme Court that the Fort Lee Ordinance in its application from 1974 to 1976 was constitutional is not based upon any far-reaching constitutional determination. Its simple holding is that appellants failed to meet their burden of proof. No substantial Federal question is involved.

II. PLAINTIFFS' FAILURE TO PROVE THE ABSENCE OF A RATIONAL BASIS FOR RENT CONTROL DOES NOT RAISE A SUBSTANTIAL FEDERAL QUESTION

Plaintiffs argued that there was no rational basis for rent control in Fort Lee. After carefully considering the evidence, the New Jersey Supreme Court rejected their argument. Indeed the New Jersey Supreme Court found that plaintiffs' own

proofs established a rational basis for rent control. The court stated:

> Contrary to plaintiffs' contentions, their own proofs demonstrate an adequate factual basis for adoption of rent control in Fort Lee. In *Troy Hills Village, supra,* the municipality's expert testified that a vacancy rate of less than 3% indicated a serious housing shortage. Other testimony then showed that the local vacancy rate was less than 2%. We found that, on this basis, the governing body could rationally conclude that rent control was necessary. Similarly, in the present case, several of plaintiffs' experts stated that a 5% vacancy rate was typical of a housing market in equilibrium; one fixed a 3% vacancy rate as indicative of a housing shortage. Plaintiffs' financial data indicate a 1973 vacancy rate of less than 1.5% in 28 buildings with 4648 units. One 1260-unit complex, Horizon House, had a 7% vacancy rate which appears to be abberational. Even including Horizon House, the borough-wide vacancy rate was 2.6%. As in *Troy Hills Village, supra,* these data constitute a rational basis for adoption of rent control. We note parenthetically that vacancy rates dropped under Ord. No. 74-32. The 1976 vacancy rate in 35 buildings with 7542 units was 1.9%. Thus it is apparent that there continues to be a rational basis for rent control in Fort Lee. *Helmsley,* 8a-9a.

Plaintiffs further argue that a "serious housing shortage" Helmsley, 8a, is not sufficient grounds for imposing rent control. Based on two cases which are fifty years old, *Block v. Hirsch,* 256 *U.S.* 135 (1921) and *Chastleton Corp. v. Sinclair,* 264 *U.S.* 543 (1924), plaintiffs assert that nothing short of a national emergency will justify rent control. Plaintiffs' argument however is forty years out of date. As one commentator concluded "The concept that an emergency is a constitutional prerequisite to price controls is a relic from the 1920 era of economic substantive due process." Barr and Keating. *The Last Stand of Economic Due Process-The Housing Emergency Requirement for Rent Control,* 7 Urban Lawyer 447 (1975).

In the 1920s and the early 1930s the Supreme Court repeatedly held that legislation regulating the amount to be charged for goods and services was unconstitutional as a violation of due process unless there was an emergency necessitating the legislation. The reign of Economic Due Process however came to an end with a series of cases in the 30s. One of these cases *Nebbia v. New York,* 291 *U.S.* 502 (1933) specifically repudiated the emergency requirement for price controls. *Nebbia* contains an exhaustive discussion of the right of government under the police power to regulate business, including the price which businesses charge.

The key sentence of *Nebbia* states:

> Price control, like any other form of regulation is unconstitutional only if arbitrary, discriminatory or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. 291 *U.S.* at 539.

A number of courts have recognized that *Nebbia* was the death knell for the emergency doctrine which plantiffs assert. For example in *Eisen v. Eastman,* 421 *F*2d 560, 567 (2nd Cir. 1960) Judge Friendly declared:

> (W)e have no doubt that it (the Supreme Court) would sustain the validity of rent control today . . . The time when extraordinarily exigent circumstances were required to justify price control outside the traditional public utility areas passed on the day that *Nebbia v. New York,* 291 *U.S.* 502, 539, 54 *S. Ct.* 505, 78 *L. Ed.* 940, 89 *A.L.R.* 1469 (1934) was decided.

Likewise both the New Jersey Supreme Court in *Hutton Park Gardens v. West Orange Town Council,* 68 *N.J.* 543, 350 *A.*2d 1 (N.J. 1975) and the Maryland Court of Appeals in *Westchester West No. 2 v. Montgomery County Md.,* 276 *Md.* 448, 348 *A.*2d 856 (Md. Ct. of Ap. 1975) have rejected the emergency argument. Both courts trace the evolution of the United States Supreme Court decisions in the first part of the twentieth century. Both conclude that the *Nebbia* decision

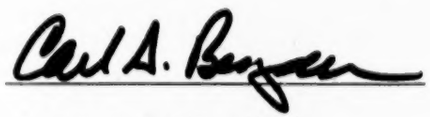
and the repudiation of economic substantive due process eliminate any requirement that price controls must be based upon an emergency. Both follow *Nebbia* and state that the constitutional test for rent control is whether the governing body had a rational basis for imposing it. Since the Supreme Court in *Helmsley* found such a basis, there is no substantial Federal question in this case.

CONCLUSION

It is respectfully submitted therefore that no substantial question is presented in this matter and the appeal should therefore be dismissed.

STANLEY C. VAN NESS, PUBLIC ADVOCATE

DATED: 3/7/79

BY: 

CARL S. BISGAIER
Attorney for Intervenor-Appellee